ASSESSMENT OF REAL PROPERTY AMENDED SENATE BILL 109

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"Though the mills of God grind slowly, yet they grind exceeding small. . . ."[1]

Amended Senate Bill 109, passed at the 1957 session of the General Assembly, is designed principally to do four things as related to the assessment of real property:

1. It revises the language of the several provisions of the Revised Code relating to the assessment of real estate to conform with the amendment of Article XII, section 2 of the Constitution adopted in 1929.
2. It directs the Board of Tax Appeals to prescribe uniform rules and methods under which the county auditors are required to proceed in determining the taxable value of real property.
3. It authorizes the filing of complaints against discriminatory assessments of real property and vests in the Board of Tax Appeals and in the Common Pleas Court jurisdiction to correct discrimination in the assessment of property.
4. The county auditor is specifically relieved of obligations to personally view and appraise property.

These objectives are considered in the order stated.

STATUTORY REVISION TO CONFORM TO CONSTITUTIONAL AMENDMENT

Prior to 1929 the Constitution required that:

> . . . . Laws shall be passed, taxing by a uniform rule, all moneys, credits, investments in bonds, stocks, joint stock companies or otherwise and also all real and personal property according to its true value in money.[2]

Under this language all of the statutes relating to the assessment of real or personal property which had been enacted prior to 1929 required the assessment of all property "by uniform rule according to its true value in money." In the case of personal property this requirement had led to widespread evasion by individuals and to excessive tax burdens upon Ohio manufacturers, merchants and farmers who were in competition with surrounding states who either did not tax personal property or taxed it at very low rates. This situation led to amending this section of the Constitution in 1929 so as to eliminate the requirement that personal property be taxed. The requirement that real property be taxed "according to its true value in money" also was modified by substituting the following:

"Land and improvements thereon shall be taxed by uniform

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[1] HERBERT, G., JACULA PRUDENTUM, p. 206.

[2] OHIO CONST., Art. XII §2.

rule according to value."

With the passage of the constitutional amendment the way was open to devising a method of taxation of personal property different from that applicable to taxation of real property. Much time and effort was expended by a joint committee of the 89th General Assembly in developing a system of classified property taxation which would be applicable to tangible and intangible personal property and this resulted in the passage of the personal property tax law of 1931[3] under which only such tangible personal property as was used in business, with a few exceptions, was taxed and intangible property was divided into various classes and taxed at moderate rates. The amount of time and energy which was put into the drafting and passage of personal property tax legislation appears to have obscured the importance of the change in the language of the Constitution respecting the assessment of real property inasmuch as nothing was done at that session with respect to conforming the statutes to the language of the constitutional amendment. In fact, nothing appears to have been initiated in this line until the 1955 session of the Legislature when a bill (S.B. 242) substantially the same as S.B. 109 was introduced and passed by the Legislature but vetoed by the Governor.

Prior to as well as since the 1929 amendment, the assessment of real property has been the function of the county auditor[4] although technically he was subject to the direction and supervision of the Board of Tax Appeals.[5] In general, this direction and supervision by the state agency was derived and exercised under the equalization powers[6] vested in the state agency. The Supreme Court held[7] that the equalization of powers did not empower the state agency to act with respect to any particular piece of property of any particular owner in a taxing district but it could act only with reference to the aggregate value of real property in the taxing district. Although the equalization provisions of the Revised Code required each county auditor to submit an abstract of his real property duplicate to the Board annually and the Board was required to determine whether the real property had been assessed at its true value in money, and if not, to order horizontal adjustments, the limited time and amount of labor involved in any detailed examination by the Board had made this proceeding largely perfunctory. As a result there was little supervision or direction of the assessment function of the 88 county auditors. Understandably the auditors being the chief assessing officers in their respective counties, followed their own ideas of valuing real property within their respective counties and although such values were ostensibly "true value in money," they generally ranged

[3] Senate Bill 323, 89th Gen. Assembly (1931).

[4] OHIO REV. CODE §§5713.01, 5713.03 (1953).

[5] OHIO REV. CODE §5715.01 (1953).

[6] OHIO REV. CODE §§5715.24, 5715.30 *et seq.* (1953).

[7] Hammond v. Winder, 100 Ohio St. 433, 126 N.E. 409 (1919).

anywhere from 25% to 75% of true value depending upon the policy of the particular auditor. These departures from true value and variations in assessment levels between counties made little difference as long as property taxation remained a purely local matter in the individual counties. However, in 1947 the General Assembly passed the Public School Foundation Program Act[8] providing payments to each school district in stated dollar amounts for each pupil attending the public school in the district. It further provided additional aid from state funds in an amount equal to the difference between its foundation program amount and the proceeds of a required 4½ mill local school levy on taxable property on the tax duplicate of such district. Obviously a county which valued its taxable property abnormally low in relation to true value, or in relation to the level of value prevailing in other counties, could qualify for additional aid at the expense of other counties in which the values were relatively high and this result quickly materialized in a number of counties.

The school foundation program was not the only state aid to local government; others included library aid, police and fire pensions, tuberculosis hospitals, welfare and local government aid funds.

In a compilation prepared by the Taxation and Research Department of the Ohio Chamber of Commerce on the subject of equalization of real property tax valuation in Ohio counties presented at the 59th annual meeting of that body in November, 1952, it appeared that 40 counties in 1948 paid in to the State as general revenue $37,896,631, but received from the State for local government uses $52,136,304. In other words, 45% of the Ohio counties made no net contribution to the cost of state government. This situation brought into question the efficacy of the equalization procedure to accomplish uniformity in the matter of the assessment of real property in the various counties and led to the enactment of Amended House Bill 644[9] which imposed heavy penalties upon any county or any taxing district in any county which failed or refused to adjust its aggregate value of real property on orders so to do by the Board of Tax Appeals. The Board was also granted a substantial increase in its appropriation with which to carry on its equalization work and assessment of real property.

The Board took A.H.B. 644 as a mandate from the Legislature to make a thorough study of the assessment levels in the various counties and to adopt rules and procedures which would result in uniformity in the matter of the assessment of real property as among the several counties and the several taxing districts within the counties and to determine the ratio of assessed value to sales prices during a three-year test period.

Assuming that the price at which real property might be sold as

[8] OHIO REV. CODE §3317.01 *et seq.* (1953).

[9] 123 Ohio Laws 779, 783 (1949).

between a willing buyer and seller was fairly representative of true value in money, the Board's study of the relation between assessed values of properties which had been sold in the various taxing districts throughout the state during the three-year test period (April 1946 to April 1949) disclosed a wide variance between the average selling price and the average assessed value of such property, so much so that the Board ordered percentage increases in assessed values for the year 1952 in any county in which it was found that the aggregate assessed value was less than 50% of the aggregate sales value in the county. This method of equalizing property assessments was approved in *State* ex rel. *Curry v. Monroe.*[10]

The equalization function of the Board only accomplished statewide a substantially uniform level of aggregate assessed values as between counties. It left untouched the equalization of assessments of individual properties.

Rule Making Power

A second and more far reaching function of the Board was its supervision of assessment of real property[11] and the duty to prescribe rules for the guidance of county auditors in assessing individual parcels of real property.

The Board's investigation of assessment levels following the enactment of A.H.B. 644 demonstrated the necessity of prescribing a uniform system of valuation rules to be followed by the county auditors in the assessment of the individual properties making up the aggregate assessed valuation of each county and of each taxing district in each county.

The dilemma faced by the Board was that the statute required that real property should be assessed at its "true value in money." According to the Board's survey, assessed values in the great majority of counties did not average 50% of true value according to the yardstick of sales; consequently, if the Board prescribed rules and methods of valuation to bring about assessment at true value the tax duplicates might be expected to be doubled thereby causing an uproar by the property owners and confusion in local fiscal matters.[12] At the same time to prescribe rules requiring the determination of assessments at less than true value would contravene the statutory authority of the Board. In this situation it was argued that if the assessment provisions of the statute were changed to conform to the constitutional amendment requiring real property to be assessed for taxation by uniform rule according to value, a way would be open by which the Board could formulate uniform rules and methods for determing "taxable value" which would

[10] 159 Ohio St. 1, 110 N.E. 2d 769 (1953).

[11] Ohio Rev. Code §5715.01 (1953).

[12] Ohio Rev. Code §5713.11 (1953), required adjustments in certain tax levies following horizontal increase or decreases in assessed values, but provided no adjustments to other levies.

not necessarily reflect true value. It was believed that this would open the way to uniformity in the assessment of all real property throughout the state with the least adjustment to the over-all tax duplicate of any county. By eliminating the statutory requirement for assessments at "true value in money" A.S.B. 109 invites a new approach from the standpoint that uniformity in assessments is more desirable than high valuations.

To accomplish this the Board of Tax Appeals has been given broad powers in prescribing rules to be followed by county auditors in determining the "taxable value" of real property. This authorization provides that:[13]

> . . . such rules shall provide that such taxable value be determined on the basis of all facts and circumstances which the board finds necessary in order to achieve uniformity and avoid over-valuation and discrimination. . . .[13.1]

Discrimination

Discriminatory assessments long have been the most difficult cases in which to secure administrative or judicial relief. No specific provision existed under the Revised Code for filing complaints based on discrimination with the Board of Revision[14] and the adjudication of the Board of Tax Appeals[15] and of the Common Pleas Courts[16] on appeal from decisions of the Boards of Revision went only to the question of the "true value in money" of the property.[17] Hence a property owner whose real property was valued at 90% of true value could not effectively complain that his assessed value should be reduced because other property of like kind in the taxing district was valued at a lesser percentage of true value.

Over a long period of years the only possibility of relief lay in resorting to federal jurisdiction, relying on the 14th Amendment.[18]

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[13] Ohio Rev. Code §5715.01.

[13.1] Since the preparation of this article, the Board of Tax Appeals has promulgated Rules 100 through 108 relating to the valuation of real property in the 88 counties of Ohio, in accordance with amended Senate Bill 109; Board of Tax Appeals entry of December 6, 1957 [Editor's note].

[14] Ohio Rev. Code §5715.19 (1953).

[15] Ohio Rev. Code §5717.03 (1953).

[16] Ohio Rev. Code §5717.05 (1953).

[17] Rollman & Sons Co. v. Board of Revision of Hamilton County, 163 Ohio St. 363, 127 N.E. 2d 1 (1955); American Steel & Wire Co. v. Board of Revision of Cuyahoga County, 139 Ohio St. 388, 40 N.E. 2d 426 (1942). Shaker Heights v. Board of Revision of Cuyahoga County, 2 Ohio Tax Cases, par. 200-468 (1954); Fisher v. Cuyahoga County Board of Revision, 1 Ohio Tax Cases par. 200-300 (1953); Gayton v. Mahoning County Board of Revision, 1 Ohio Tax Cases, par. 200-322 (1953).

[18] Conn. v. Ringer, 32 F. 2d 639 (6th Cir. 1929); Western Union v. Tax Commission of Ohio, 21 F. 2d 355 (1927); Gas Co. v. Imes Penn, 11 F. 2d 191 (S.D. Ohio 1926); City Ry. v. Beard, 293 Fed. 448 (S.D. Ohio 1923); City Ry. v. Beard, 283 Fed. 313 (S.D. Ohio 1922).

This source of relief however appears to have recently been overturned in *Union Properties, Inc. v. Monroe.*[19]

Senate Bill 109 amends Sections 5715.19, 5717.03 and 5717.05, Revised Code, so as to provide that a complaint alleging discrimination may be filed with the Board of Revision, and the Board of Tax Appeals and the Common Pleas Court are given alternative jurisdiction on appeal to adjust discrimination where shown to exist. These amendments should supply the taxpayer with adequate remedies where discrimination is shown to exist with respect to the assessment of his real property.

Auditor's Duty to Appraise

Hertofore Section 5713.01 of the Revised Code has required that:

> . . . The auditor shall view and appraise each lot or parcel of real estate and the improvements located thereon at least once in each six-year period. . . .

The auditor was authorized by this Section to employ such experts, deputies, clerks and other employees as he deemed necessary to the performance of his duties as an assessor. Because of the complexity in appraising the many kinds of property within the larger counties, a practice had grown up of employing an appraisal company or expert appraisers to make the appraisal required by the statute. Usually this appraisal was adopted by the auditor for assessment purposes without specific knowledge on his part of the individual properties appraised or an independent exercise of judgment on his part. Despite the fact that an appraisal of property by experts might be expected to produce a more intelligent determination of values, the Supreme Court had held "that there is no provision in the law which authorizes the auditor to divest himself of the duty of personally making the appraisement."[20] Senate Bill 109 amends Section 5713.01 to now provide that "the auditors shall view and appraise, *or cause to be viewed or appraised,* each lot or parcel of real estate and the improvements thereon at least once in each six-year period. . . ." It is believed that this amendment will legalize the procedure usually followed in the sexennial appraisal of real property in the larger counties in which it has been necessary to employ outside experts to assist in the appraisal.

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[19] 232 F. 2d 884 (6th Cir. 1954), *cert. denied* 352 U.S. 918 (1956).

[20] Boeckling Co. v. Schwer, 122 Ohio St. 40, 43, 170 N.E. 648, 650 (1953).